


From: Szelag.Matthew@epamail.epa.gov
To: [Niemi, Cheryl \(ECY\)](#)
Cc: [Conklin, Becca \(ECY\)](#)
Subject: Re: 1998 ANPRM language on variances
Date: Monday, December 17, 2012 1:40:51 PM

Thanks Cheryl. I'm going to ask HQ about their thoughts on this language.

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 "Niemi, Cheryl (ECY)" ---12/17/2012 11:42:02 AM---Hi Matt. Here is the 1998 ANPRM language on variances I mentioned. Please see 7.d. last column, of

From: "Niemi, Cheryl (ECY)" <cnie461@ECY.WA.GOV>
To: Matthew Szelag/R10/USEPA/US@EPA
Cc: "Conklin, Becca (ECY)" <bcon461@ECY.WA.GOV>
Date: 12/17/2012 11:42 AM
Subject: 1998 ANPRM language on variances

Hi Matt. Here is the 1998 ANPRM language on variances I mentioned. Please see 7.d. last column, of page 38758 and then onto 36789. Copied the text below, and here is the link to the ANPRM:
http://water.epa.gov/scitech/swguidance/standards/handbook/upload/1998_07_07_1998_July_Day-07_w17513.pdf. Highlighted the important part.

Would really like to see this type of language as part of the discussion surrounding the new WQS regs, if and when they come out. The way I read this, it would be a 7th factor to use to demonstrate the need for a variance, in addition to the 131.10.9g) factors. Would be great for areas where we have long (or even short) term clean-up and/or source control activities in place with uncertain outcomes.

7. Are changes needed in the water quality standards regulation, policy or EPA guidance to address whether, and under what circumstances, use attainability analyses may be used to justify a non-aquatic life use classification, given the broad range of aquatic communities that may exist?
d. Alternatives to "Downgrade" of the Designated Use. As discussed above, where a State or Tribe believes that a particular designated use is not attainable, States and Tribes have the option of refining a water body's designated use, for example by creating subcategories of the use and describing the use in more detail. A subcategory can, and may need to be, water bodyspecific if the State's or Tribe's use classification system is not sufficiently precise to accommodate the subcategory of designated use for the water body in question. States and Tribes also have the option of removing the designated use and replacing the removed use with a

new one that, under the regulation, reflects attainable conditions in the water body. Use removal and to a lesser extent refinement are also commonly referred to as use “downgrade.” Both of these options, refinement and removal of the designated use, are not timelimited. That is, the designated use that results from exercising either of these options becomes the new goal use of the water body. In the following discussion, three alternatives to use downgrade that have been used by States are presented. They are variances, temporary standards, and ambient-based criteria. These alternatives are less “draconian” than use downgrading in the sense that they can provide adjustments to particular aspects of the standards—*i.e.*, to the criteria for particular pollutants or the criteria as applied to certain dischargers—without changing the designated use and the full suite of criteria to protect the designated use. EPA’s current thinking is that often the attainable condition of particular water bodies is not well understood due to uncertainty about expected results of water quality improvement actions. In such situations, EPA believes it may be appropriate to implement water quality protection actions, assess the results of those actions, and implement additional measures where necessary to continue to improve water quality. EPA believes that iterative assessment and implementation in these types of situations is probably the best way to gain an understanding of the ultimate attainable condition of the water body. The mechanisms described below may be well-suited to this situation because they leave the designated use of the water body, the ultimate goal, in place while providing a defined period of time (in the case of variances and temporary standards) to document, through implementation and assessment, the water quality improvements that are possible through various measures and thus, the attainability of the goal.

Implementation Tools

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